IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WP(C).No. 34291 of 2005(G)

AGAINST THE ORDER IN IA 9187 2005 IN OS.1686/2003 of I ADDL.M.C.,TRIVANDRUM

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PETITIONER:

RAJENDRAN, S/O.GOVINDAN,
REMYA BHAVAN, KARUMOM,
NEMOM, THIRUVANANTHAPURAM.

BY ADV. SRI.T.M.CHANDRAN
SRI.V.AJAKUMAR
SRI.V.A.SASIDHARAN
SRI.S.SUJITH

RESPONDENTS:

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1. **MURALEEDHARAN, S/O.BHASKARAN,**
   ELANKATHARA VEEDU, KARUMON,
   NEMOM, THIRUVANANTHAPURAM.

2. **SUMANGALA, W/O.MURALEEDHARAN,**
   DO. DO.

3. **RETNA KUMAR @ BABU, S/O.MURALEEDHARAN,**
   DO. DO.

4. **ANIL, S/O.MURALEEDHARAN,**
   DO. DO.

5. **SATHEESAN, S/O.MURALEEDHARAN,**
   DO. DO.

6. **SANTHOSH, S/O.MURALEEDHARAN,**
   DO. DO.

7. UDAYAN, S/O.MURALEEDHARAN,
ELANKATHARA VEEDU, KARUMOM,
NEMOM, THIRUVANANTHAPURAM.

8. LEELA, W/O.MANIYAN,
DO. DO.

9. SREEKANTAN, S/O.MANIYAN,
DO. DO.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.34291/2005 G

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PETITION I.A.10329/04 DTD. 26/10/04 FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT, THIRUVANANTHAPURAM.**

EXT.P2: **COPY OF THE ORDER ISSUED TO THE COMMISSIONER BY THE COURT BELOW.**

EXT.P3: **COPY OF THE COMMISSION REPORT DTD. 22/06/05 SUBMITTED BY THE COMMISSIONER ALONG WITH PLAN.**

EXT.P4: **COPY OF THE OBJECTION DTD. 10/08/05 TO THE COMMISSION REPORT FILED BY THE PETITIONER.**

EXT.P5; **COPY OF THE PETITION I.A.9187/05 DTD. 26/09/05 FILED BY THE PETITIONER.**

EXT.P6; **COPY OF THE ORDER DTD. 14/10/05 IN I.A.9187/05 IN O.S.1686/03 PASSED BY THE MUNSIFF COURT, THIRUVANANTHAPURAM.**

/TRUE COPY/

P.S.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C).No.34291 of 2005 G

Dated this the 19th day of July, 2007.

JUDGMENT

Ext.P6 order dismissing an application filed by the plaintiff in a suit for injunction, for appointment of a commissioner for measurement of the properties of the defendants also, so as to properly identify the boundaries in dispute, is under challenge in this writ petition filed by the plaintiff under Article 227 of the Constitution. Though all the respondents have been served with notice, none of them have entered appearance to resist the prayers.

2. In fact, the learned Munsiff had allowed the earlier application I.A.No.10329/04 filed by the petitioner for measurement of the plaint scheduled property on the basis of the title deed of the plaintiff and the survey plan and also for reporting the existing boundaries, if any. The present application

I.A.No.9187/05, it appears, has been filed on the basis of the report of the commissioner, who was appointed pursuant to the order in I.A.No.10329/04. The said report, according to Sri.T.M.Chandran, is not satisfactory and measurement of the property of the defendants will also be necessary for identifying the disputed boundaries. Learned Munsiff has observed that there was no prayer in I.A.No.10329/04 seeking measurement of the properties of the defendants. But then, the present I.A.No.9187/05 is filed as an independent interlocutory application seeking reliefs necessitated in the light of the report submitted by the Advocate Commissioner. After all, the learned Munsiff himself has observed that a proper identification of the plaint scheduled property is necessary to resolve the dispute correctly. If that be so, I think it is necessary to appoint commissioner for measurement of the property

of the defendants and there is no need to rely on the earlier report and declare the petitioner's request.

3. I, therefore, set aside the order Ext.P6 passed in I.A.No.9187/05 and allow the said application. The court below will depute the advocate who was appointed as commissioner pursuant to the order in I.A.No.10329/04 as the commissioner. The cost of the work to be done pursuant to the order now passed (allowing I.A.No.9187/05) shall be borne by the petitioner himself, irrespective of the result of the suit. In other words, the cost of this commission work will not be part of the ultimate cost of the suit.

Writ petition is disposed of as above.

Sd/-

(PIUS C. KURIAKOSE)
JUDGE

sk/

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